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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 43096 |
| Plaintiff-Respondent, |) | |
| |) | Elmore County Case No. |
| v. |) | CR-2013-703 |
| |) | |
| RICHARD RYAN LAUBACH, |) | |
| |) | RESPONDENT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Laubach failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of life, with 15 years fixed, imposed upon his guilty plea to murder in the first degree?

Laubach Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Laubach pled guilty to murder in the first degree and the district court imposed a unified sentence of life, with 15 years fixed. (R., pp.220-22.) Laubach filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.227-

34.) Laubach filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.237-39.)

"Mindful of the fact that he did not present new information in support of his motion," Laubach nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion in light of his claims that he "loved" the 22-month-old child he killed and that the child "died from unintentional acts." (Appellant's brief, pp.1, 3.) Laubach has failed to establish an abuse of discretion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Absent the presentation of new evidence, "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence." Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Laubach did not appeal the judgment of conviction in this case. On appeal, he merely argues that his sentence was excessive as originally imposed and, therefore, the district court should have reduced his sentence pursuant to his Rule 35 motion. (Appellant's brief, p.3.) Because Laubach presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive.

Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Even if this Court addresses the merits of Laubach's claim, Laubach has still failed to establish an abuse of discretion, for reasons more fully set forth in the district court's Memorandum Decision and Order Denying Motion to Reconsider Sentence, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Laubach's Rule 35 motion for a reduction of sentence.

DATED this 7th day of December, 2015.

/s/ LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_____/s/_____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

129
FILED

2015 FEB 27 PM 12:42

BARBARA STEELE
CLERK OF THE COURT
DEPUTY *[Signature]*

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3
4 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
5 STATE OF IDAHO IN AND FOR THE COUNTY OF ELMORE
6

7 STATE OF IDAHO,

Case No. CR 2013 703

8 Plaintiff,

9 vs.

MEMORANDUM DECISION AND ORDER
DENYING MOTION TO RECONSIDER
SENTENCE

10 RICHARD RYAN LAUBACH,

11 Defendant.
12
13

14 The Defendant filed a Motion to Modify Pursuant to Rule 35 on January 15, 2015.
15

16 PROCEDURAL HISTORY

17 The Defendant entered a guilty plea to First Degree Murder and was sentenced
18 on September 19, 2014. The Court sentenced Defendant, Richard R. Laubach, for the
19 crime of First Degree Murder, a felony, pursuant to Idaho Code §§ 18-4001, 18-4003(d)
20 (any murder committed in the perpetration of, or attempt to perpetrate, aggravated
21 battery on a child under twelve (12) years of age). The Defendant was sentenced to
22 fifteen (15) years fixed and up to life indeterminate. The minimum punishment available
23 for this offense was ten (10) years fixed imprisonment without parole and the court was
24 required to impose a life sentence indeterminate. No death penalty notice was filed in
25 this case and the defendant was sentenced by a judge, so the maximum punishment
26

MEMORANDUM DECISION AND ORDER DENYING MOTION TO RECONSIDER
SENTENCE

1

1 available for this offense was life imprisonment, and/or a fifty-thousand (\$50,000.00)
2 dollar fine, and/or a five thousand (\$5,000.00) dollar civil penalty to the victim pursuant
3 to Idaho Code § 18-4004 . The court ordered court costs but waived any fine due to
4 indigency. The court imposed a five thousand dollar (\$5,000.00) civil penalty for the
5 victim of this offense. The Defendant received credit for time served of five hundred
6 fifty-seven (557) days.

7 Defendant filed a Motion to Modify Pursuant to Rule 35 on January 15, 2015. No
8 response was filed by the state and more than fourteen days have passed since the
9 motion was filed. The Defendant filed on February 19, 2015 a request for hearing which
10 the court previously denied on February 26, 2015.

11 ANALYSIS

12 Rule 35 provides:

13
14 (M)otions to correct or modify sentences under this rule must be filed
15 within 120 days of the entry of the judgment imposing sentence or order
16 releasing retained jurisdiction and shall be considered and determined by
the court without the admission of additional testimony and without oral
argument, unless otherwise ordered by the Court in its discretion...

17 The request was timely filed. The Defendant requests that his fixed sentence be
18 reduced to the mandatory minimum of ten (10) years. The determination to grant or
19 deny the relief requested by Defendant is a matter committed to the Court's discretion.
20 See *State v. Gardner*, 127 Idaho 156, 164, 989 P.2d 615 (Ct. App. 1995) The Court
21 has engaged in the analysis set forth in *State v. Toohill*, 103 Idaho 565, 650 P.2d 707
22 (Ct. App. 1982).

23
24 The court has considered the *Toohill* factors of protection of society, deterrence of
25 crime, rehabilitation of the offender, and punishment. The court has also considered the
26

**MEMORANDUM DECISION AND ORDER DENYING MOTION TO RECONSIDER
SENTENCE**

2

1 defendant's plea agreement where he agreed to plead guilty in exchange for the State's
2 recommendation of ten (10) years to fifteen (15) years fixed with life indeterminate.

3 The Court has considered the Defendant's argument that the victim died as a
4 result of "unintentional acts" and the victim was "loved" by Mr. Laubach. The Court
5 understands the mechanism of the Murder First Degree charge and his guilty plea was
6 that the victim died while the Defendant was in perpetration of, or an attempt to
7 perpetrate, an aggravated battery the victim—a child under twelve (12) years of age.
8 The victim was a toddler. The requisite intent for this section of Murder First Degree is
9 found in the definition of battery in Idaho Code § 18-903 and requires either a) a *willful*
10 and unlawful use of force or violence, b) an actual, *intentional* and unlawful touching or
11 striking of another, or c) by unlawfully and *intentionally* causing bodily harm (emphasis
12 added). The Court specifically covered this at the plea hearing and defense counsel
13 informed the court that the Defendant would enter a guilty plea under subsection (b) an
14 actual, *intentional* and unlawful touching or striking of the victim. The Defendant then
15 entered a provident plea. The plea was that the Defendant actually, intentionally and
16 unlawfully touched the victim and therefore, caused great bodily harm, permanent
17 disability or permanent disfigurement to the victim resulting in the victim's death. The
18 requirement for intent was that the defendant intended to unlawfully touch the victim, not
19 that he intended the death of the victim.
20

21 In the Defendant's Version in the presentence report at pages 6 and 11, the
22 defendant denied intentionally hurting Joey and the Defendant described the accident
23 happened while throwing Joey in the air and catching him and the Defendant was
24 unable to catch Joey on the last throw so Joey's head hit the ground which was
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26

MEMORANDUM DECISION AND ORDER DENYING MOTION TO RECONSIDER
SENTENCE

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1 concrete covered with carpet. The court inquired at the sentencing whether the
2 Defendant was maintaining this was an accident rather than an intentional act. The
3 Defendant denied that he had made the comment in the presentence report and stated
4 he was still guilty of Murder in the First Degree.

5 The Court simply disagrees with the Defendant that "There is nothing in the
6 record to justify a sentence beyond the mandatory minimum." First, sentencing beyond
7 the statutory mandates for this crime is discretionary with the court as the court
8 balances the *Toohill* factors of protection of society, deterrence of crime, rehabilitation of
9 the offender, and punishment. We do not live in an age or a civilization that mandates
10 "an eye for an eye, or a tooth for a tooth." While the Defendant had only a minimal
11 criminal history, the diversion he had was charges for injury to a child (this victim) and
12 domestic battery (of the victim's mother) arising in August 2012. The prosecution was
13 then diverted and charges dismissed after the defendant completed nine hours of anger
14 management, a parenting class, a Family Advocacy Safety Education Seminar, and the
15 defendant and his wife had developed a Couple's Safety Plan. Additionally, the court
16 considered the nature and extent of the injuries to this child which caused his death.
17 The court took into account the victim's age (22 months at death) and the Defendant's
18 age of twenty-one (21) years at sentencing. And, the court took into account the
19 Defendant's eventual entry of a guilty plea in this case instead of requiring a jury trial.
20 The court has not ignored the lack of other criminal history, this Defendant's service in
21 the military and defense of the United States, the Defendant's age, or the potential for
22 rehabilitation of the Defendant. However, weighing all of this, for a crime that involved
23 the battering of a child with injuries so severe that they led to the child's death, the court
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MEMORANDUM DECISION AND ORDER DENYING MOTION TO RECONSIDER
SENTENCE

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1 does consider the fixed portion of the sentence given this case "on the low-end of the
2 spectrum." The spectrum in this case is the rest of Mr. Laubach's life incarcerated in
3 prison which would be many, many decades given his current age and state of health.

4 The court had previously balanced the *Toohill* factors, considering the age of the
5 defendant, the minimal criminal history of the Defendant, the previous diversion of a
6 misdemeanor battery of the same child involving the same Defendant with the
7 Defendant receiving treatment, and the seriousness of this offense in fashioning the
8 original sentence in this case. The court still finds fifteen years fixed appropriate for the
9 murder of this child.

10 For these reasons, the Court DENIES Defendant's Motion to Modify Pursuant to
11 Rule 35.

12 DATED this 27th day of February, 2015.

13
14
15 
16 _____
17 Lynn Norton, District Judge
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MEMORANDUM DECISION AND ORDER DENYING MOTION TO RECONSIDER
SENTENCE

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